

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0511

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

DAVID ALLAN ROSS & RENAE ELAINE BRAAKSMA-ROSS
MADERA COUNTY

This Complaint is issued pursuant to California Water Code section 13323 to David Allan Ross & Renae Elaine Braaksma-Ross (hereafter collectively "Braaksma-Ross" or "Discharger") for failing to submit a Report of Waste Discharge required under Water Code section 13260.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (hereafter Central Valley Water Board or Board) alleges the following:

BACKGROUND

1. The discharge of irrigation return flows or storm water from irrigated lands in the Central Valley Region may contribute, or has the potential to contribute waste to ground and/or surface waters. The term "waste" is broadly defined in Water Code section 13050, subdivision (d), and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state (Water Code § 13050(e)). The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state (Water Code § 13263).
2. Attachment E of the Waste Discharge Requirements General Order for Growers within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (Order R5-2012-0116-R2) defines "irrigated lands" as "land irrigated to produce crops or pasture for commercial purposes; nurseries; and privately and publicly managed wetlands."
3. Central Valley Water Board staff developed a list of landowners in Madera County, including Braaksma-Ross, which were likely to be discharging wastewater from irrigated lands to waters of the state and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to waters of the state and to identify owners and operators of agricultural lands who may not have complied with the California Water Code. Both data sets were used to develop lists of parcels for which Water Code section 13260 Directive Letters were issued that require parcel owners to obtain regulatory coverage for commercial irrigated lands.
5. Evaluation of 2012 county assessor and 2010 FMMP data indicated that Braaksma-Ross owned approximately 557 acres of agricultural land within the East San Joaquin

Water Quality Coalition (Coalition) area in Madera County, including the following Assessor's Parcel Numbers [APN] and their respective acreages:

Madera County					
APN	Acres	APN	Acres	APN	Acres
027-222-001	19	027-191-021	19	027-192-029	7
027-222-011	21	027-191-022	19	027-192-030	5
027-222-012	23	027-192-011	37	027-201-006	18
027-091-020	20	027-192-012	9	027-201-007	29
027-191-007	40	027-192-015	36	027-201-012	19
027-191-008	78	027-192-016	20	027-201-018	12

6. On 30 January and 18 April 2013, the Central Valley Water Board issued notices to Braaksma-Ross describing new water quality regulations and actions available to comply with the regulations. Braaksma-Ross did not obtain regulatory coverage and did not contact the Board. Copies of the notices are provided as Attachment A.
7. On 21 October 2013, the Assistant Executive Officer of the Central Valley Water Board issued a Water Code section 13260 Directive Letter (hereafter Directive) to Braaksma-Ross, sent via certified mail. The Directive stated that, *"You are receiving this letter because, based on information available to the California Regional Water Quality Control Board, you own the following parcels with irrigated cropland, which are subject to new regulations."* Although the Directive was issued specific to the eighteen parcels in Madera County that had been inspected, all irrigated agricultural lands owned and/or operated by Braaksma-Ross are required to be enrolled under regulatory coverage. A copy of the Directive and proof of delivery are provided as Attachment B.
8. On 22 August 2013, staff conducted inspections of fifteen Madera County parcels and found evidence of commercial irrigated agriculture based on the crop grown and the size of the operations. Copies of the inspection reports are provided along with the 21 October 2015 Directive in Attachment B.
9. The Directive required Braaksma-Ross to obtain regulatory coverage for their irrigated agricultural parcels within 15 calendar days of receipt of the Directive. As detailed in the Directive, Braaksma-Ross could comply by joining the East San Joaquin Water Quality Coalition ("Coalition" or "ESJ Coalition"), or by submitting a Report of Waste Discharge. The Directive was received by Braaksma-Ross on 13 November 2013. Thus, the last day to comply with the Directive was 28 November 2013. Braaksma-Ross did not obtain regulatory coverage by 28 November 2013.
10. Because the Discharger failed to respond by the deadline specified in the Directive, a Notice of Violation (NOV) was sent via certified mail to Braaksma-Ross on 5 December 2013. A copy of the NOV and proof of delivery are provided as Attachment C. The certified mail receipt for the NOV to Braaksma-Ross was signed by "David A. Ross" as received on 7 December 2013.
11. On 3 June 2014, staff sent Braaksma-Ross a notification letter via certified mail that an Administrative Civil Liability Complaint (Complaint) in the amount of \$6,290 would be

issued if Braaksma-Ross did not obtain regulatory coverage, and then initiate settlement discussions regarding the proposed ACL fine by 13 June 2014. A copy of this “pre-ACL letter” is provided as Attachment D.

12. The certified mail receipt for the pre-ACL letter issued to Braaksma-Ross was signed, by “David A. Ross” as received on 13 June 2014. A copy of the certified mail receipt for the pre-ACL is included in Attachment D.
13. On 13 June 2014, Davis Allan Ross left a voice message for Board staff. Mr. Ross indicated that he had received the pre-ACL letter and that he had some questions.
14. On 16 June 2014, Board staff contacted Mr. Ross and discussed the pre-ACL letter and scheduling a meeting to discuss settlement. Mr. Ross stated that he was working with the Madera County Farm Bureau and the Coalition to obtain regulatory coverage. Staff reiterated to Mr. Ross to enroll in the Coalition and submit a Notice of Intent (NOI) to the Water Board. The Discharger indicated that he would do both.
15. On 20 June 2014, Braaksma-Ross joined the Coalition. Board records indicate that Braaksma-Ross enrolled 24 parcels comprised of 557 acres in the Coalition. Also on 20 June 2014, Braaksma-Ross submitted an NOI and the NOI processing fee to the Central Valley Water Board.
16. On 11 July 2014, Central Valley Water Board staff who advise the Board on enforcement matters (known as the “Advisory Team”) issued a memorandum regarding proposed settlements of ACL Complaints issued to the David L. & Linda M. Davis Trust and for William R. Sinks et al for failing to submit a Report of Waste Discharge as required by Water Code section 13260. The issues raised in that memorandum apply to the Braaksma-Ross enforcement case, which accounts for the difference in the proposed penalty amounts between the pre-ACL letter and this Complaint.
17. On 17 February 2015, Board staff conducted a field inspection of the Braaksma-Ross parcels for the purpose of determining if the parcels have the potential to discharge irrigation return flows or storm water to waters of the state. The inspections found no direct evidence of surface water discharges from the parcels (e.g., discharge pipes at borders or erosion rills leading offsite). Copies of the inspection reports are provided as Attachment E.

ALLEGED VIOLATIONS

18. Braaksma-Ross failed to submit a Report of Waste Discharge as required by Water Code section 13260. The Water Code section 13260 Directive Letter was issued to David Allan Ross & Renae Elaine Braaksma-Ross on 21 October 2013 and required Braaksma-Ross to either submit a Notice of Intent (NOI) to comply with the RoWD requirements or a NOI to enroll in the East San Joaquin Water Quality Coalition. Braaksma-Ross submitted an NOI and joined the Coalition on 20 June 2014, 203 days past the deadline cited in the Directive.

REGULATORY CONSIDERATIONS

19. The Central Valley Water Board's authority to regulate waste discharges that could affect the quality of the waters of the state, which includes both surface water and groundwater, is found in the Porter-Cologne Water Quality Control Act (California Water Code Division 7).
20. Water Code section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (RoWD) containing such information and data as may be required by the Regional Board, unless the Regional Board waives such requirement. The Central Valley Regional Board implements Water Code section 13260 in the area where the Discharger's lands are located.
21. Pursuant to Water Code section 13261, subdivision (a), a person who fails to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).
22. Water Code section 13261, subdivision (b)(1), states that civil liability may be administratively imposed by a regional board or the state board for a violation of subdivision (a) in an amount not exceeding one thousand dollars (\$1,000) for each day in which the violation occurs.
23. Compliance with the 13260 Directive is 203 days past due. The maximum liability under Water Code section 13261(b)(1) for the failure to furnish a report under Water Code section 13260 is \$1,000 per each day the violation occurs, for a total of two hundred and five thousand dollars (\$203,000).
24. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Central Valley Water Board shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
25. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327.

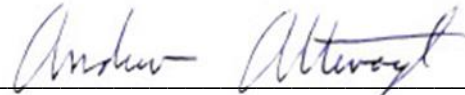
26. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment F. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
27. The Enforcement Policy endorses progressive enforcement action for violations of waste discharge requirements when appropriate, but recommends formal enforcement as a first response to more significant violations. Progressive enforcement is an escalating series of actions that allows for the efficient and effective use of enforcement resources. The Enforcement Policy recommends formal enforcement actions for the highest priority violations, chronic violations, and/or threatened violations. Order R5-2012-0116-R2 identifies failure to obtain regulatory coverage as a priority violation with regard to enforcement.
28. **Maximum and Minimum Penalties.** As described above, the maximum penalty for the violations is \$203,000. The Enforcement Policy requires that the minimum liability imposed be at least ten percent higher than the economic benefit so that liabilities are not construed as the cost of doing business and so that the assessed liability provides a meaningful deterrent to future violations. The economic benefit to the Discharger resulting from the failure to enroll the three Madera County parcels is estimated at \$288 (see Attachment F for how this estimate was derived). Per the Enforcement Policy, the minimum penalty is the economic benefit plus ten percent (\$316).
29. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the Water Code that may subsequently occur.
30. Issuance of this Administrative Civil Liability Complaint is an enforcement action, and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

DAVID ALLAN ROSS & RENAE ELAINE BRAAKSMA-ROSS ARE HEREBY GIVEN NOTICE THAT:

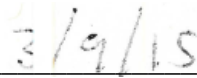
1. The Assistant Executive Officer of the Regional Water Board proposes that Braaksma-Ross be assessed an administrative civil liability in the amount of **thirty two thousand five hundred and thirty-two dollars (\$32,532)**. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **4/5 June 2015**; the hearing may be delayed if the Discharger submits a waiver (see Attachment G), and requests either to enter settlement discussions or to delay the hearing based on sufficient justification.
2. During the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the

monetary value of the Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

3. The Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including legal and expert witness costs) incurred after the date of the issuance of this Complaint, and through completion of the hearing.



Andrew Altevogt, Assistant Executive Officer



(Date)

Attachment A: 30 January 2013 Notice of New Water Quality Regulations and
18 April 2013 Final Notice of New Water Quality Regulations

Attachment B: 21 October 2013 California Water Code section 13260 Directive
with 22 August 2013 Inspection Reports

Attachment C: 5 December 2013 Notice of Violation for Failure to respond to 13260 Directive

Attachment D: 3 June 2014 pre-ACL letter

Attachment E: 17 February 2015 Inspection Reports

Attachment F: Calculation of Penalty per SWRCB Water Quality Enforcement Policy

Attachment G: Waiver Form

Attachment H: Hearing Procedures

Attachment I: ACL Fact Sheet